

Udayan vs Rajivji Memorial Contract Labour Co-Op. Society Ltd.

Udayan vs Rajivji Memorial Contract Labour Co-Op. Society Ltd.

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Court : Kerala

Decided On : Feb-06-2024

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/27495/2015

Appellant : Udayan

Respondent : Rajivji Memorial Contract Labour Co-Op. Society Ltd.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945
WP(C) NO. 27495 OF 2015 PETITIONER: UDAYAN AGED 40 YEARS,
S/O.KRISHNAN NAIR, MEETHALARAYROTH, KUNIKKAD P.O.,
PURAMERI, VADAKARA - 673 503. BY ADVS. ARJUN RAGHAVAN
POOJA PANKAJ(K/924/2016) T.R.HARIKUMAR(K/000295/1992)
RESPONDENTS:

1 RAJIVJI MEMORIAL CONTRACT LABOUR CO-OP. SOCIETY LTD.
NO.D.2489, ARUR (PO), VADAKARA- 673 507, KOZHIKODE
DISTRICT, REPRESENTED BY ITS SECRETARY. 2 THE CO-

OPERATIVE ARBITRATION COURT (NORTHERN) SANTHINAGAR, KOZHIKODE-673 006, REPRESENTED BY ITS SECRETARY. 3 THE COURT OF THE KERALA CO-OPERATIVE TRIBUNAL THIRUVANANTHAPURAM -695 034, REPRESENTED BY ITS SECRETARY. 4 ARBITRATOR/ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, VADAKARA- 673 101. 5 M.K. BHASKARAN, PRESIDENT, RAJIVJI MEMORIAL CONTRACT LABOUR CO-OPERATIVE SOCIETY LTD., NO. D.2489, ARURU P.O., VADAKARA - 673 507. BY ADVS SRI.P.P.JACOB SRI. DHEERAJ A S (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

The petitioner is a former employee of the 1 st

respondent- Society. While working as a Secretary of the Society, the petitioner was proceeded with on a charge that the petitioner had misappropriated certain amounts. The disciplinary proceedings ended with an order of dismissal. The petitioner challenged the disciplinary proceedings by initiating arbitration proceedings under Section 69 of the

Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the Act). Initially the enquiry report was set aside by the Arbitration Court and that order of the Arbitration Court was upheld by the Tribunal. Thereafter, after affording to the petitioner an opportunity of hearing and to adduce evidence, a fresh order of dismissal was

issued by the 1st respondent- Society. This was again challenged by the petitioner before the Arbitration Court which upheld the order of dismissal. The Tribunal, however, reversed the said finding. Thereupon the 1st -:3:- respondent - Society filed W.P (C) No.21633 of 2016, which was disposed of by Ext.P7 judgment

remanding the matter for fresh consideration of the Arbitration Court.

2. The learned counsel for the petitioner would

submit with reference to Ext.P5 order of the Arbitration Court that the Arbitration Court has not considered anything except the audit report, which found that the petitioner was guilty for the loss suffered by the Society. It is submitted that in proceedings under Section 69 of the Act, it is not open to the Arbitration Court to proceed solely on the basis of an audit report without affording an

opportunity of adducing evidence to the petitioner. It is submitted that in such circumstances, Ext.P5 order is liable to be set aside and the matter is to be remanded to the Arbitrator for fresh consideration in accordance with the law.

3. Sri. P. P. Jacob, the learned counsel appearing for the 1st respondent - Society would however submit that the remedy of the petitioner against Ext.P5 lies in approaching the Co-operative Tribunal by filing an appeal. It is :-4:-

submitted that the petitioner failed to file any appeal against Ext.P5 within the time specified in Section 82 of the Act and the petitioner cannot thereafter maintain this writ petition under Article 226 of the Constitution of India seeking to challenge Ext.P5 unless there are grounds which would indicate that this Court would interfere with Ext.P5, even though there was an effective alternative remedy. In other words it is the submission of the learned counsel appearing for the 1st respondent- Society that since the

petitioner had failed to challenge Ext.P5 by invoking the statutory remedies, he cannot challenge the same by filing a writ petition after the period of limitation to file a statutory appeal.

4. Having heard the learned counsel for the petitioner and the learned counsel for the 1st respondent - Society, I am of the view that the petitioner has made out the case for interference of Ext.P5. A reading of Ext.P5

will indicate that the Arbitration Court in a proceeding under Section 69 of the Act had proceeded solely on the basis of the findings of the Auditor without

independently -:5:- considering the question as to whether the said liability is to be recovered from the petitioner. Therefore, I am inclined to set aside Ext.P5 on the ground that it is issued

in violation of principles of natural justice. The learned counsel for the 1st respondent is right in contending that were the petitioner had a statutory remedy, he could not have approached this Court by filing a writ petition under Article 226 of the Constitution of India after the period of limitation for filing an appeal has expired and unless there were grounds which would enable this Court to conclude that Ext.P5 order is liable to be set aside notwithstanding the availability of alternative remedy. It is settled law that violation of natural justice is one of the grounds which

would enable this Court to set aside an order

notwithstanding the availability of any alternative remedy against such order. Having found that Ext.P5 order is issued in violation of principles of natural justice, I overrule the objection raised by the learned counsel for the 1 st respondent that the writ petition is not maintainable as the petitioner had an alternative remedy and he had not -:6:- availed the same within the period of limitation. Accordingly, this writ petition is allowed. Ext.P5 is

quashed. The matter is remanded to the 4 th respondent, who shall consider the claim raised by the 1 st respondent Bank with notice to the petitioner and after affording to the petitioner an opportunity of hearing and an opportunity to produce all evidence in support of his claim. Fresh orders shall be passed by the 4th respondent, as above, within a period of three months from the date of receipt of a certified copy of this judgment. I make it clear that I have not expressed any opinion on the merits of the claims of either side it will be open to the 4 th respondent to pass a

fresh order in accordance with the law and after considering the contentions raised by both sides. Sd/- GOPINATH P. JUDGE ats -:7:- APPENDIX OF WP(C) 27495/2015 PETITIONERS EXHIBITS EXHIBIT P1 A TRUE COPY OF THE AWARD DATED 15-10-2012 IN ARC NO. 178 OF 2011 BEFORE THE SECOND

RESPONDENT (ALONG WITH TRUE ENGLISH TRANSLATION OF EXTRACTS IN MALAYALAM)

EXHIBIT P2 A TRUE COPY OF THE JUDGMENT DATED 17-08-2013 IN APPEAL NO. 99 OF 2012 BEFORE THE THIRD RESPONDENT EXHIBIT P3 A TRUE COPY OF THE A TRUE COPY OF THE RELEVANT PAGES OF THE STATUTORY AUDIT REPORT OF THE FIRST RESPONDENT FOR THE YEAR 2007-2008 EXHIBIT P3(a) A TRUE ENGLISH TRANSLATION OF EXT.P3 EXHIBIT P4 A TRUE COPY OF THE A TRUE COPY OF THE WRITTEN STATEMENT DATED 24-09-2011 SUBMITTED BY THE PETITIONER IN ARC NO. 351 OF 2011 EXHIBIT P4 (a) A TRUE ENGLISH TRANSLATION OF EXT P4 EXHIBIT P5 A TRUE COPY OF THE AWARD DATED 19-09-2013 IN ARC NO. 351 OF 2011 EXHIBIT P5(a) A TRUE ENGLISH TRANSLATION OF EXT P5 EXHIBIT P6 A TRUE COPY OF THE EXECUTION PETITION DATED NIL JANUARY 2015 SUBMITTED AS E.P. 8/2015 IN ARC 351/2011 BEFORE THE SUB COURT VADAKARA. EXHIBIT P6(a) A TRUE ENGLISH TRANSLATION OF EXTP6 Exhibit P7 A TRUE COPY OF JUDGMENT DATED 09-06-2023 IN WP(C) 21633 OF 2016 Exhibit P8 A TRUE COPY OF RELEVANT PAGES OF BYELAWS OF THE 1ST RESPONDENT SOCIETY

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